Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Conference on	)	WC Docket 02-269
Accounting Issues	)	DA 02-3449

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

I. Introduction

The National Association of State Utility Consumer Advocates ("NASUCA") offers these reply comments pursuant to the Request for Comment ("Request") released in this docket on December 12, 2002.[1] NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

The Federal-State Joint Conference on Accounting Issues ("Joint Conference"), through its Request, sought comment "with respect to its comprehensive review of regulatory accounting and related reporting requirements." Request, at [1]. The comments filed by the large and mid-sized incumbent local exchange carriers ("ILECs") support substantial reductions in accounting and regulatory requirements. On the other

[1] NASUCA filed comments on January 31, 2003. Comments responded to herein include those of AT&T Corp. ("AT&T"); BellSouth Corporation ("BellSouth"); Florida Public Service Commission ("FPSC"); Independent Telephone and Telecommunications Alliance ("ITTA"); National Telecommunications Cooperative Association ("NTCA"); North Carolina Utilities Commission – Public Staff ("NCUC"); Qwest Corporation ("Qwest"); SBC Communications Inc. ("SBC"); Sprint Corporation ("Sprint"); TCA, Inc. – Telecom Consulting Associates ("TCA"); United States Telecom Association ("USTA"); Verizon; Anne Waymouth Wiecki, CPA; Public Service Commission of Wisconsin ("PSCW"); and WorldCom, Inc. ("WorldCom").

hand, various regulators, NASUCA, competitors and rural carrier associations recommend the Commission take a slower approach to eliminating regulatory requirements.

A. The reasons cited by the ILECs to reduce accounting detail are inadequate.

1. Regulatory requirements for ILECs are not unduly discriminatory.

USTA complains that although "there are many different types of carriers that make up the telecommunications industry, only ILECs are required to follow regulatory accounting." USTA at 8. Similarly, SBC asserts that such asymmetric regulation distorts competition because "[o]nly one class of carriers, ILECs, is required to expend significant financial and administrative resources to comply with the ARMIS and Part 32 accounting rules, leaving the ILECs at a competitive disadvantage." SBC at 5; see also Qwest at 5-7, BellSouth at 5, ITTA at 5. As was pointed out in NASUCA's initial comments, regulatory requirements imposed on dominant and monopoly providers by the Federal Communications Commission ("Commission") are justified in order to protect the public interest, and to protect consumers as part of that public interest.[2] Only after a carrier is found to be non-dominant, similar to the finding made for AT&T in 1999, should there be a relaxation of regulatory requirements for the ILECs. Thus differential treatment of the ILECs is necessary, not improper.

Each of the commenting large ILECs urges the Commission to allow them to simply follow Generally Accepted Accounting Practices ("GAAP"). See, e.g., Qwest at 5-7, Verizon at 13-15, SBC at 6, BellSouth at 6. This would mean the elimination of the

[2] See Comments of the National Association of State Utility Consumer Advocates (January 31, 2003) filed in this docket ("NASUCA Initial Comments") at 8.

USOA and ARMIS requirements. At this stage in the competitive marketplace, where the norm is not meaningful economic competition, but market dominance and monopoly providers, it is far too early for such a radical elimination of regulatory requirements.

ITTA urges the Commission to consider carefully proposals to add new regulatory requirements for midsize carriers. See ITTA at 2. As stated by NASUCA in its initial comments, midsize carriers are very likely to continue to be monopoly and dominant providers in their markets and therefore regulatory requirements are still necessary for the Commission and the states to carry out their regulatory responsibilities. See NASUCA Initial Comments at 10-11.

In Ohio, Broadwing, Inc., the owner of Cincinnati Bell Telephone, is weighted down with debt and looking to cut its losses with the sale of its broadband network in order to avoid bankruptcy.[3] Even though Cincinnati Bell has less than 2% of the nation's access lines, it serves 798,409 access lines.[4] This is not insignificant. In this example, both federal and state regulators should have access to the most reliable information in order to protect ratepayers from adverse effects of the actions of the parent company attempting to prevent the failure of a subsidiary.

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[3] See e.g., "Broadwing Harkens Back to Days as Local Phone Co.," *Cincinnati Business Courier, (January 27, 2003)* at http://cincinnati.bizjournals.com/cincinnati/stories/2003/01/27/story3.html.

[4] See Annual Report of Cincinnati Bell Telephone Company to the Public Utilities Commission of Ohio for the year 2001, at Schedule 28. Cincinnati Bell also has access lines in contiguous portions of Kentucky and Indiana.

2. Regulatory requirements for ILECs are still needed.

Verizon discusses the various ways information is used by FCC, the states and other government entities. See Verizon at 10-12. Verizon's point appears to be that this is generally not information based on ARMIS. However, none of the information referred to by Verizon is used for setting rates, and having information to set rates is still important where monopoly providers and market dominance exist.

BellSouth refers to information (for instance, interconnection revenue and USF revenue) that is available in its current accounting systems. See BellSouth at 17-18. This is also not publicly filed information and is therefore not accessible to interested entities such as consumer advocates.

MCI includes a detailed list of regulatory responsibilities of the Commission and the states for which accounting information is necessary including allocations and the setting of local rates. MCI at 2. As AT&T notes, "virtually all such cost studies – including the Commission's own universal service cost model – rely on the Bell's ARMIS data as a starting point." AT&T at 7. As further support, NCUC states, "regulated/nonregulated cost apportionments and the jurisdictional separation of revenues, expenses, and investment continue to be necessary for understanding the financial impact of regulatory decisions on ILECs." NCUC at 4.

One crucial use of this information is in audits. Qwest believes that the increased use of audits "must be tied to a showing that the existing audit process is insufficient." Qwest at 7. Such a showing is not necessary: Audits are enforcement tools that are currently available to the Commission and the states, both jointly and separately, and can help provide the level of diligence necessary to ensure protection of consumers against abuses. PSCW states its support for joint audits: "Such joint efforts are mutually beneficial and provide a good avenue of communication between and among federal at state regulators." PSCW at 20.

AT&T states the increased use of audits is important especially since dominant incumbent ILECs are obtaining authorization to enter into long distance markets where the ILECs bottleneck facilities are inputs. See AT&T at 3. AT&T also points out that incentives and the ability to cross-subsidize and discriminate are strong and "effective record-keeping and reporting requirements are essential to deter and detect such misconduct." *Id*. Several examples of problems uncovered by recent audits, as cited by AT&T, reinforce AT&T's point that "precise and highly disaggregated records" need to be retained and reported and that "it is imperative that the Commission step up its audit procedures, by increasing the frequency of audits and the penalties for violations." *Id*. at 12.

For their part, USTA and the ILECs assert that regulatory requirements should not be used to prevent market failure. See USTA at 9-13, SBC at 12, Verizon at 8, Bellsouth at 22. The Joint Conference did not request comment on this topic and nowhere in the Request for Comment does it state that regulatory requirements should be used for the specific purpose of preventing market failure. According to USTA, "those telecommunications carriers that have experienced failures (or bankruptcies) in the past year were never subject to the Commission's regulatory accounting and audit requirements." USTA at 10. Yet there is one carrier subject to the Commission's regulatory requirements, Qwest, that has had very publicized accounting irregularities.[5] The regulatory requirements of the Commission are used to protect ratepayers from monopoly power and market dominance, not to prevent market failure. See AT&T at 4. Therefore, the recently reported accounting irregularities and alleged fraud are relevant because of concerns, including among regulators, as to dominant carrier wrongdoing whether it be cross-subsidization or non-compliance with GAAP and FASB.[6]

AT&T describes (at 5) an exemplary situation showing the need for regulatory accounting: The Commission's recent rejection of the ILEC's request to tighten credit requirements for other carriers, based on the lack of basis in the ILEC's regulatory accounts for such conditions. See also WorldCom at 3.

USTA and the ILECs assert that price cap regulation makes booked costs irrelevant. See USTA at 8, SBC at 4, Verizon at 13, BellSouth at 12. However, especially given the continued market dominance and the incentive to cross-subsidize, costs are still important to determine price floors based on long run service incremental cost. Costs are also necessary to perform price cap plan reviews, to evaluate exogenous adjustments, and to determine UNE rates and universal service costs. NCUC points out that "[a]lthough price cap regulation diminishes the need for some detailed accounting information, it does not eliminate the need for reliable pertinent financial information."

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[5] See e.g., "Qwest Says It Found More Accounting Errors Affecting Earnings," *Wall Street Journal*, (November 18, 2002) at page B4; "Qwest Overstated Up to $1.48 Billion in Revenue," *New York Times*, (September 23, 2002) at page A22.

[6] Qwest's argument (at 13) that the Commission should rely on the "many rating agencies and analysts that have a number of experts that monitor the financial condition of publicly-held companies" ignores both the fallibility and the persistent problems of conflicts of interest among such experts. Qwest at 13. See Comments of Anne Weymouth Wiecki, CPA, for a detailed summary of some of the major flaws of current accounting.

NCUC at 2. NASUCA also agrees with NCUC that "…price caps are an alternative form of economic regulation, not deregulation." NCUC at 2.

Several ILECs state that the Commission must find a requirement to be necessary in order to retain it. See Verizon at 3-8, SBC at 2-3, Qwest at 3. What the ILECs ignore is the requirement that the Commission must first find "meaningful economic competition." AT&T expands on this by observing,

> Moreover, because the Commission's accounting and reporting requirements continue to play an extremely important role in protecting the public interest in the face of enduring local bottlenecks, the Act's biennial review requirement, 47 U.S.C. § 161 ("Section 11"), which could be triggered in this context only if there was sufficient "meaningful economic competition" to make a particular accounting requirement no longer "necessary in the public interest," never comes into play.

AT&T at 3.

Verizon (at 13) claims that where requirements are not "necessary," under the Act, they must be eliminated. As stated previously herein, where ILECs are still dominant, different and more stringent accounting requirements are necessary for them.[7] In addition, under the Act, a regulatory requirement must be eliminated only if it is rendered unnecessary as the result of meaningful economic competition.

SBC (at 5) cites to the Commission's granting of § 271 applications and granting of pricing flexibility for certain services. Yet neither process invokes a standard of "meaningful economic competition."[8] Indeed, as AT&T states (at 6), regulatory accounting shows that the grant of flexibility was unwarranted.

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[7] SBC's argument (at 18-19) that "ILEC" is not synonymous with "dominant" fails to cite a single example of a non-dominant ILEC.

[8] Neither does Verizon's citation (at 13) to "significant local competitive entry."

SBC (at 3) is only looking at one side of the equation in its discussion of "necessary" and only part of the one side, at that. See also Verizon at 2. The standard in the Act is "necessary in the public interest." Hence SBC's citation to *GTE Service Corp. v. FCC,* 205 F.3d 416, 423 (D.C. Cir.2000) (see also Verizon at 5) which limited "'necessary' to that which is required to achieve a desired goal" does not help here: The FCC can easily determine that broad accounting requirements for ILECs are required to achieve the public interest. The various ILECs' arguments that they represent only a "small segment of the industry" (e.g. Qwest at 5) ignore their continued dominance of the key portion of the telecommunications network.[9]

Several small carrier associations provide their own perspectives on the need for continued regulatory requirements. According to NTCA (at 2), regulations (e.g., the USOA) are still needed due to continued rate of return regulation in most rural markets where competition is insufficient.

TCA (at 3) makes a suggestion that, if the Commission determines to eliminate certain accounts, retention of the accounts remain optional for rural local exchange carriers. TCA's reasoning seems logical given the reaction to the prior account eliminations by the Rural Utilities Service. See TCA at 2-3.

B. Specific accounts

BellSouth (at 8-9) opposes reinstating directory revenue as a separate account. BellSouth claims that removing directory revenue from ARMIS will cause no harm in

[9] Qwest's further statement (at 10) that "RBOCs competed nationally" ignores Qwest CEO Notebaert's recent assertion that he would not allow his company to compete against, e.g. SBC. See e.g. "Ameritech customers off limits: Notebaert," *The Chicago Tribune,* (October 31, 2002) at http://www.chicagotribune.com/templates/misc/printstory.jsp?slug=chi%2D0210310106oct31.

some states in which it operates because those states already require a Form M to be filed. However, this issue is not removal of directory revenue from ARMIS. The issue is elimination of the Part 32 account containing directory revenue and the bundling of directory revenue with miscellaneous revenue. If this occurs, Form M will no longer contain a separate item for directory revenue. Therefore, BellSouth's argument that it will still be contained in the Form M does not go to the heart of the issue. As stated by NASUCA in its initial comments, directory revenue is still of interest to regulators in many states and as such, it should not be obscured by combining it with all other miscellaneous revenues. See NASUCA Initial Comments at 14. See also AT&T at 14-15.

Verizon (at 16-17) discusses its recommendation to eliminate continuing property records requirements. Verizon again asserts that the presence of price cap regulation justifies the elimination of such requirements. However, as stated previously herein, the existence of price cap regulation does not negate the necessity to have detailed information about the costs of the carriers. In addition, as is pointed out by AT&T, "in the last audit of the incumbent LECs' continuing property record accounts, the Commission staff discovered that the incumbents' regulatory books reflected *billions* of dollars in property that does not actually exist." AT&T at 10-11. Thus, as previously stated by NASUCA in prior comments, continuing property records are a significant and practical tool to ensure the protection of consumers given the continued existence of monopoly providers and market dominance.[10]

[10] See Initial Comments of The National Association of State Consumer Utility Advocates Concerning Continuing Property Records (CPR) (April 8, 2002) *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 3; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* CC Docket Nos. 00-199, 97-212, 80-286, and 99-301.

C. Conclusion

AT&T (at 8-9) provides a detailed explanation of why the Commission has the authority from the Act to collect regulatory information used solely by the states. See also MCI at 1. PCSW understandably and correctly cites *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 f.3d 323, 344 (7th Cir. 2000), which describes the regulatory responsibility shared under the 1996 Act between state and federal regulators. Sprint (at 7) explains that the public interest requires the FCC to collect information used solely by the states. Indeed, the Commission should definitively reject Qwest's proposal (at 9) that the Commission should preempt state accounting requirements.

NASUCA agrees with PSCW that "The FCC will help minimize costs for the entire industry, a benefit to all telecommunications consumers, if it maintains a system of accounts that reflects the needs of both federal and state telecommunications industry regulators." PSCW at 17.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

____
David C. Bergmann
Chair, NASUCA Telecommunications Committee
Assistant Consumers' Counsel
bergmann@occ.state.oh.us
Kathy Hagans
Principal Regulatory Analyst
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910
(301) 589-6313 (telephone)
(301) 589-6380 (facsimile)

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